

ST 13-0028-GIL 05/28/2013 HOTEL OPERATORS' TAX

This letter discusses the Hotel Operators' Tax Act. See 86 Ill. Adm. Code 480.101 (b)(3). (This is a GIL.)

May 28, 2013

Dear:

This letter is in response to your letter dated April 23, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company is updating our tax compliance information. We would appreciate your help with the enclosed questionnaire. Please return the completed questionnaire via email to X or by mail to XX.

The questionnaire that we have asked to be completed asks questions that are pertinent to our industry. We need written advice that we can rely on in our compliance efforts. If there is any expense associated with obtaining written advice to our request, please advise us. We are willing to pay for this information. Please understand that we will treat the completed questionnaire as written advice from your agency and rely on it to set our systems. We will also use this information to support our position if issues arise during audit by your agency.

We would also appreciate any brochures or pamphlets you may have as it relates to the hospitality business. A copy of a guest exemption certificate, if required, would also be appreciated.

DEPARTMENT'S RESPONSE:

The Department generally does not answer lengthy questionnaires submitted to the Department. Furthermore, a request for a letter ruling binding on the Department must comply with 2 Ill. Adm. Code 1200.110. I hope the following information is helpful.

The Hotel Operators' Occupation Tax Act ("HOOT") imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel, as defined in the Act. The tax is imposed at the rate of 6% of 94% of the gross rental receipts, excluding the proceeds of renting, leasing or letting to permanent residents of that hotel. HOOT defines "hotel" to include any building or buildings in which the public may, for consideration, obtain living quarters, sleeping or housekeeping

accommodations. 35 ILCS 145/2(1). HOOT defines "rent" as "the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature." "Permanent resident" means any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or rooms, in a hotel for at least 30 consecutive days. 35 ILCS 145/2.

A hotel operator incurs this tax on room rentals to entities that would otherwise be exempt from sales taxes (*i.e.*, entities such as exclusively charitable, religious, or educational groups or government entities that possess exemption identification numbers issued by the Department). 86 Ill. Adm. Code 480.101 (b)(3).

The HOOT operates very differently from what is commonly referred to as "sales taxes" in Illinois. In Illinois sales tax consists of two separate but complementary taxes. The Retailers' Occupation Tax is imposed on the retailer and the Use Tax is imposed on the purchaser. Since the Use Tax is imposed on the purchaser, there is a tax to which an exempt purchaser's exempt status can attach and, because these taxes are complementary, if the purchaser is exempt from paying Use Tax, then the retailer is generally exempt from the Retailers' Occupation Tax. As a result, when an exempt entity purchases tangible personal property and presents its exemption identification number ("E" number) to a retailer, its purchases are exempt from Use Tax and the retailer is exempt from Retailers' Occupation Tax.

However, that is not the result with the HOOT. Under the HOOT, tax is imposed only upon the hotel operator. There is no complementary tax imposed upon the room occupant. Since there is no tax liability imposed upon the room occupant, there is nothing to which an occupant's exempt status can attach. In addition, the HOOT does not exempt a hotel operator from tax when a room is rented to an exempt entity holding an "E" number issued by the Department.

The HOOT authorizes hotel operators to collect an amount from their customers that represents reimbursement for the hotel operator's tax liability. The fact that room occupants hold an exemption identification number issued by the Department does not exempt them from paying this reimbursement charge, if imposed by the hotel operator.

Receipts subject to the tax do not include those which are not in any way reasonably connected with or attributable to the renting, leasing or letting of rooms for use as living quarters or for sleeping or housekeeping accommodations. Examples of receipts not subject to the Hotel Operators' Occupation Tax include those from the selling of food (although food sales are subject to sales tax in Illinois) and the rental of meeting or conference rooms. Please refer to Section 480.101(b)(6).

Many of the questions you have asked can be answered by reviewing the Department's website. The website provides access to the Illinois Compiled Statutes, Department's rules, Private Letter Rulings and General Information Letters. For example, the Department has discussed the meaning of "permanent resident" in ST 10-0096 (GIL) and ST 10-0081 (GIL) and the exemption for food sales in ST 09-0161 (GIL).

I also direct your attention to 86 Ill. Adm. Code Part 480 Hotel Operator's Occupation Tax Act and 86 Ill. Adm. Code 130.2080 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel.

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Beginning in June 2012, the U.S. Department of State began issuing new types of U.S. Department of State Diplomatic Tax Exemption Cards. Each Diplomatic Tax Exemption Card contains text outlining the scope of the exemptions, including hotel exemptions. The types of exemptions given are determined on a case-by-case basis and, thus, will usually vary by cardholder. I suggest you review the United States Department of State Bureau of Diplomatic Security, Office of Foreign Missions' "New Tax Card Design Flyer" publication dated June 2011, which can be found on-line at www.state.gov/ofm/tax/.

If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel